

REQUEST FOR COUNCIL ACTION

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MEETING
DATE: 5/19/03

AGENDA SECTION: PUBLIC HEARINGS	ORIGINATING DEPT: PLANNING	ITEM NO. E-8
ITEM DESCRIPTION: Text Amendment #03-03 initiated by the City Planning and Zoning Commission to amend Sec. 60.506. This amendment addresses permit approval and current zoning or related violations		PREPARED BY: John Harford, Senior Planner

May 12, 2003

City Planning and Zoning Commission Recommendation:

On March 26, 2003 the City Planning and Zoning Commission initiated a text amendment to Section 60.506. A public hearing was held by the CPZC on April 23, 2003. Section 60.506 of the ordinance covers the issuance of zoning certificates by the city. The proposed language states that a zoning certificate for a subject property must be denied if the property has an outstanding violation of a federal, state, or city land use law or noncompliance with a city development agreement. The Planning Department and City Attorney's Office had slightly different proposed language which is provided in the staff report and attachments.

The CP&ZC discussed the application and voted to approve the proposed text amendment, with the language provided by the City Attorney's Office.

Planning Department Recommendation:

See the attached staff report dated April 16, 2003. Staff recommends approval of the text amendment and the City Attorney's proposed language.

Council Action Needed: The Council should pass an ordinance approving the text amendment.

Attachments:

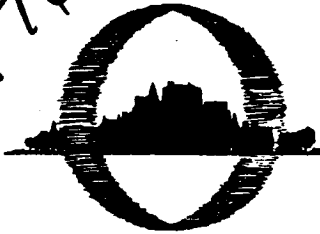
1. Staff report dated April 16, 2003 and attachments.
2. Minutes of the CP&ZC meeting of April 23, 2003

Distribution:

1. City Clerk
2. City Attorney
3. City Administrator
4. Planning Department File

COUNCIL ACTION: Motion by: _____ Second by: _____ to: _____

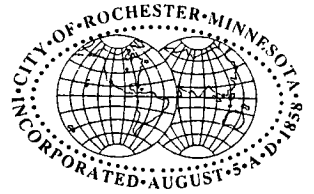
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ROCHESTER-OLMSTED PLANNING DEPARTMENT

2122 Campus Drive SE, Suite 100 • Rochester, MN 55904-4744

COUNTY OF
Olmsted



TO: CITY PLANNING AND ZONING COMMISSION

FROM: JOHN HARFORD, SENIOR PLANNER

DATE: April 16, 2003

RE: Text Amendment #03-03 initiated by the City Planning and Zoning Commission, to amend Section 60.506 of the Rochester Zoning Ordinance and Land Development Manual. This amendment addresses permit approval and current zoning or related violations.

Applicant:

City Planning and Zoning Commission

Proposed Text Amendment:

The CPZC initiated a text amendment to Section 60.506 of the zoning ordinance that addresses the issuance of permits and certificates.

Land Use Plan:

The Land Use Plan does not specifically address this issue.

Zoning:

Currently, Section 60.506 provides the guidelines for the zoning administrator in issuing zoning permits.

Referral Comments:

Those agencies responding had no comments.

Analysis:

The Rochester Zoning Ordinance and Land Development Manual has several stated purposes, including protecting the public safety and welfare, implementing the policies of the comprehensive plan, encouraging innovative land development, and creating a system of land use regulation. In order to give meaning to the land use regulations, various



procedures and standards have been made a part of the document. Among those procedures is the enforcement of the ordinance standards and development related conditions of approval.

Section 60.130 explains the process of enforcement while 60.140 covers the application and scope of the ordinance. Section 60.500 provides the city with an administrative process for development/permit processing. And in particular, Section **60.506** establishes the procedure for issuing zoning permits and certificates. Staff is of the opinion that these administrative sections should be in concert with one another, and for the most part they are just that. However, in one important way they are not.

The issue that the staff periodically experiences is a request for a zoning certificate or permit on a property while, at the same time, there is an ongoing violation of the very same zoning ordinance that the applicant is complying with to gain additional rights for the development or use of the property. In some cases there are violations of related county, state or federal laws that are related to land/property use (including but not limited to the, city wetland ordinance and related federal wetland rules, federal billboard rules administered by MNDOT, county solid waste ordinance, city grading requirements as they appear in Ch. 50 of the Rochester Code of Ordinances, city development agreements, Public Waters rules, Building Code rules). It does not make much sense for the city to be in the middle of an enforcement action against a property and landowner while at the same time issuing permits for additional activities on the same property, unless the permit is needed to correct the violation.

As a result of a number of incidents of violations of various sorts over the years the staff is recommending that the ordinance be amended to recognize this inconsistency and to correct it. Section 60.134 states that "Once a notice of violation has been served, no work shall proceed on any development covered by such orders, except in a manner consistent with those orders and this ordinance", meaning the zoning ordinance. An amendment to Section 60.506 is the reasonable place to locate an additional resolution of the issue that addresses the broader matter of use and development.

The language that is being proposed for 60.506 is as follows:

5) The zoning administrator must deny the permit if:

- A. the property is covered by a violation notice or legal action as a result of a violation of any federal, state, county or city land use law, land development related action covered by the Rochester Code of Ordinances, or land use, development or building related rules of federal, state or county agencies.**
- B. any city development agreement covering the subject property has not been complied with.**

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Staff Recommendation:

Staff recommends that the CPZC and City Council amend Section 60.506 by adding subpart 5.

Findings:

The criteria that need to be addressed for a text amendment include:

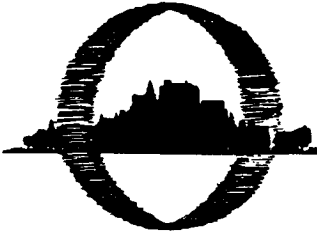
1. Whether there is a public need for the amendment.
2. Whether the amendment will accomplish one or more of the purposes of this ordinance, the Comprehensive Plan or other adopted plans or policies;
3. Whether adoption of the amendment will be lawful.

Findings could be as follows:

1. There is a need for the city to provide a clear process for correction of zoning and related land use violations. This provision will support the City's efforts at enforcing the provisions of the zoning ordinance and create an internal consistency.
2. The amendment will assist the city in bringing violations into compliance. Rules without enforcement create inequities among landowners, reduces public safety, affects the public general welfare, and can create lingering problems for property owners or permit holders. Further one of the stated purposes of the ordinance is for the city to have a violation brought into compliance.
3. The proposed change is considered reasonable and lawful. It has been reviewed by the City Attorney.

Attachments:

1. Zoning Ordinance text – Section 60.506, 60.130, and 60.111.



ROCHESTER-OLMSTED PLANNING DEPARTMENT

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COUNTY OF
Olmsted



TO: CITY PLANNING AND ZONING COMMISSION

FROM: JOHN HARFORD

DATE: APRIL 17, 2003

RE: TEXT AMENDMENT #03-03

Terry Adkins, City Attorney has supplied an alternative as follows:

- 5) **The zoning administrator must deny the permit if:**
- A. **The property is subject to a pending notice of violation or legal action as a result of a violation of any federal, state, county or city land use law or administrative rule;**
or
 - B. **The property is subject to a development agreement any provision of which remains unsatisfied.**

This alternative proposal does simplify the language and reduces the redundancy of the staff proposal. However, staff is of the opinion that the language should not include "pending"; the provision should not apply unless the Planning Department has already issued the violation notice.



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- 7) In the case of an application for an advertising sign, the applicant must identify all existing advertising signs within 1200 feet of the proposed site. If the application's proposed site does not satisfy the minimum distance requirements from another advertising sign, the application must contain written consent from the owner of the property upon which the existing advertising sign is located indicating the owner will not exercise those rights provided by Section 60.509 (4).

60.505 Submission of Development Permit Application: Application materials shall be submitted to the zoning administrator who shall have the date of submission indicated on each copy of the material submitted. Within three (3) days, the zoning administrator shall determine whether the application is complete. If the zoning administrator determines that the application is incomplete or otherwise does not conform to the provisions of this ordinance, the zoning administrator shall immediately notify the applicant of the negative determination by personal service or registered mail. An application for which a negative determination has been made may be resubmitted after revision to overcome the reasons for the negative determination. If a development application is complete and in conformance with the provisions of this ordinance, the zoning administrator shall accept it, noting the date of acceptance.

60.506 Issuance of Permits and Certificates: In issuing certificates and permits, the zoning administrator shall be guided by the following provisions.

- 1) **Action on accepted application:** Following acceptance of an application, the zoning administrator shall either issue or deny a permit or certificate within the following time frames:

Zoning Certificates	10 days
Sign Permits	10 days
Housing Certificates	5 days
For Other Applications not Requiring Approvals by Others	20 days
Applications Requiring Approval or Review by Others	7 days (following approval by others)

- 2) The zoning administrator's decision to either approve or deny the application shall be based on the evidence submitted with the application, its conformance with the provisions of the this ordinance, comments from referral agencies, and approvals of other bodies as required.
- 3) The zoning administrator shall issue the development permit if he finds the applicable approvals by others have been granted and the proposed development otherwise conforms to the requirement of this ordinance.
- 4) The zoning administrator shall deny the development permit if the required approvals are not obtained or the application fails to comply with ordinance requirements.

60.507 Notice of Action: The zoning administrator shall notify the applicant as to the final disposition of the application. The notice shall indicate the date when the decision will take effect and shall describe the right of appeal pursuant to Article 60.700 of the

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60.123 **Planning and Zoning Commission:** There shall be a Planning and Zoning Commission established as organized under Chapter 20 of the Rochester Code of Ordinances. The Commission shall have advisory and decision making powers relative to various administrative procedures as identified in the ordinance.

60.124 **City Council:** The City Council as organized under Chapter VIII of the Charter of the City of Rochester, Minnesota, which shall have various decision making powers granted to it as identified in the ordinance.

60.130 ENFORCEMENT POLICY

It is the policy of the City that the purpose and intent of this section will normally be served best if the zoning administrator first seeks to have a violation brought into compliance.

60.131 **Zoning Administrator to be notified of Violations:** Whenever a violation of this ordinance is known or suspected to exist or expected to be committed, any person may so notify the zoning administrator. All officers and agencies of the City of Rochester shall notify the zoning administrator of any information which suggests that a violation exists or is expected to be committed.

60.132 **Zoning Administrator to Investigate Violations:** Upon receiving any information which suggests a violation, the zoning administrator shall conduct an investigation to determine whether a violation exists or is reasonably expected to be committed. To this end, the zoning administrator and his authorized representatives are hereby empowered to cause any building, other structure, or tract of land to be inspected and examined. Where necessary, the zoning administrator may call upon the Chief of Police for assistance.

60.133 **Notice of Violation:** The zoning administrator shall, if he determines a violation to exist or is reasonably expected to be committed, promptly give notice by regular mail, or by personal service to the owners of record for tax purposes of the property involved. The notice shall indicate the location and nature of the violation, the provision or provisions of the ordinance which have been or are expected to be violated, and whether immediate enforcement will be sought or up to thirty days allowed to correct or remove the violation. The zoning administrator, or employees under his supervision, may issue a citation for those offenses which are listed on the local fine and bail schedule by the District Court. A defect in the notice of violation with respect to any such matters shall not prevent the enforcement of this ordinance.

60.134 **Discontinuance of Work:** Once the notice of violation has been served, no work shall proceed on any development covered by such orders, except in a manner consistent with those orders and this ordinance. It shall be a separate misdemeanor violation for any person to continue any development in a manner inconsistent with the orders or this ordinance.

60.135 **Enforcement After Expiration of Time Period:** If, after the time period provided in the notice of violation has elapsed and the alleged violation has not been corrected or brought into compliance, the zoning administrator shall consult with the city attorney, and the city attorney shall initiate any legal or equitable action which is deemed appropriate. Such action shall not be initiated if: a) an appeal of the notification of

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CHAPTER 60 INTRODUCTORY PROVISIONS

60.100 TITLE

This ordinance shall be known and cited as the "Zoning Ordinance and Land Development Manual of the City of Rochester, Minnesota" and may be referred to herein as the "zoning ordinance" or "ordinance".

60.110 AUTHORITY

The 1965 Laws of Minnesota, Chapter 462, authorizes the municipality to administer planning and zoning activities, establish a Zoning Board of Appeals, enact official controls, and provide penalties for violation thereof. Chapter 104 and 105 of the Minnesota Statutes authorize minimum standards and criteria for the management of "Shoreland" and "Floodplain" Areas within the City of Rochester.

60.111

Statement of Purpose: In order to protect the public health, safety, morals and general welfare of the community, this ordinance is adopted by the City Council for the purposes identified in Chapter 462 of the Statutes of the State of Minnesota which relate to Municipal Planning (in particular, paragraphs 462.351 through 462.365), for the purpose of implementing the policies set forth in the Comprehensive Plan of Rochester, to encourage innovation in land development by removing regulatory barriers to the consideration of new or unique ideas which are consistent with the purposes and policies referenced, and to create a system of land use regulation that is intent on finding equitable solutions to the land use conflicts which routinely arise as development occurs, so as to provide for the orderly development of land within Rochester and to conserve the value of land and buildings.

60.112 The provisions of this ordinance shall be regarded as the minimum requirements for the protection of the public health, safety, and general welfare.

60.113 The ordinance and the various articles and paragraphs thereof are hereby declared to be severable. If any article, section, subsection, paragraph, sentence or phrase of the ordinance is adjudged unconstitutional or invalid by any court of competent jurisdiction, the remainder of the ordinance shall not be affected thereby.

60.120 ADMINISTRATIVE BODIES

60.121 **Zoning Administrator:** There is hereby established the office of Zoning Administrator. It shall be the duty of the zoning administrator to enforce the ordinance in accordance with its administrative provisions. The Planning Director, as provided for in RCO, Chapter 20.16, or his authorized representative shall serve as the zoning administrator.

60.122 **Zoning Board of Appeals:** There shall be a zoning board of appeals consisting of seven members, one of whom shall be a member of the commission. All members shall be appointed by the Mayor with the approval of the council. Members shall serve for a term of three years, except the commission representative, who shall serve for a term of one year. No member shall serve more than two consecutive terms. The board shall choose a chair from among its membership and determine its rules of proceeding, a copy of which shall be filed with the zoning administrator.

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the Owner. Erosion and sediment control that may result from the development of Lot 1, Block 2 will be managed with a temporary on-site sediment pond and associated erosion control strategies. The Owner proposes to manage post development runoff from Lot 1 Block 2 by directing all of the surface flow to a planned bioswale drainage way and private two-cell stormwater management pond to be built by July 1, 2005 on the Owner's adjacent land. Owner agrees to leave the temporary on-site sediment control pond in place until the permanent off-site private facilities are constructed. Owner agrees to pay a Storm Water Management fee only if the private off-site facilities are not constructed by July 1, 2005. Existing and proposed stormwater management facilities owned and maintained by Owner may need to be modified in the future to handle any increase in stormwater runoff attributable to the actual impervious area of the development parcels. Owner agrees to formalize these requirements by execution of a Development Agreement for the entire Property.

3. Access control shall be dedicated along the entire length of 19th Street NW when the property is re-platted except where the approved access location is shown. The northbound approach on the interior roadway to 19th St. NW should be designed with two approach lanes to provide a lane for right turn traffic and a lane for left turn traffic. There also should be an eastbound right turn lane on 19th street NW at the access point to 19th St. NW.
4. At the time of re-platting the applicant shall coordinate with the City Public Works Department to determine if additional right-of-way needs to be dedicated for 19th Street NW to accommodate turn lanes.
5. The Owner is obligated to provide pedestrian facilities along both frontages of the Property abutting Industrial Dr NW/Opportunity Rd NW. The Owner may request through the Development Agreement to execute a Pedestrian Facilities Agreement to address its obligations, in lieu of constructing the required facilities concurrent with development of the Property.
6. At the time of re-platting of the property or development of this site, the replacement plan approved in 1992 for this property shall be reviewed and resubmitted for approval.

* Text Amendment #03-03 initiated by the City Planning and Zoning Commission, to amend Section 60.506 of the Rochester Zoning Ordinance and Land Development Manual. The amendment addresses permit approval and current zoning or related violations.

Mr. John Harford presented the staff report, dated April 16, 2003, to the Commission. The staff report is on file at the Rochester-Olmsted Planning Department.

Mr. Harford explained that he received comments from the City Attorney asking for some slight changes. He indicated that he agreed with the changes, except for changing a word to "pending."

Mr. Harford stated that Public Works indicated that they did not have any concerns regarding the recommendation regarding development agreements.

Mr. Harford explained that violations are a complaint driven system. He discussed how violations are process through the Planning Department.

Ms. Alfredson, City Attorney, stated that she spoke with Mr. Adkins regarding his proposed language. She indicated that it was felt that there should be some definite period of time legal action could be taken. Therefore, she indicated that he suggested the work "pending." She further explained the process of sending a violation, going through a court process, then through the violation process again after the person has been fined and has yet to adhere to the violation.

With no one else wishing to be heard, Mr. Quinn closed the public hearing.

Ms. Petersson moved to recommend approval of Text Amendment #03-03 initiated by the City Planning and Zoning Commission with the language suggested by the City Attorney and with the staff-recommended findings. Mr. Ohly seconded the motion. The motion carried 8-0.

OTHER BUSINESS:

1. As may be brought up with members

Discussion ensued regarding the status of the residential parking ordinance.

ADJOURN:

Motion made by Ms. Rivas to adjourn, seconded by Ms. Petersson. Mr. Michael Quinn, Vice Chair, adjourned the meeting at 8:30 p.m.

Respectfully Submitted:

Philip H. Wheeler, AICP

Ms. Lisa Wiesner, Chair

jlg